United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

76-1346

B

In The

United States Court of Appeals

For the Second Circuit

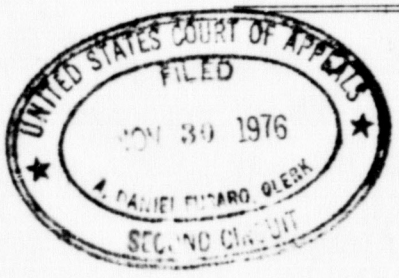
UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

WALTER R. CONLIN,
Defendant-Appellant.

Appeal from a Judgment of Conviction in the United States District Court for the Western District of New York at 74-265

APPENDIX FOR THE DEFENDANT-APPELLANT



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DOCKET ENTRIES.

October 10, 1974	-	Indictment filed
October 29, 1974	-	Arraignment with counsel
December 9, 1974	-	Defendant's Motion for Discovery and Inspection filed
January 9, 1975	-	Government's response to Defendant's Motion filed
January 13, 1975	-	Motion for Discovery and Inspection orally argued
June 12, 1975	-	Decision of Court denying Defendant's Motion for Discovery
March 24, 1976	-	Jury is empanelled and trial commences
April 8, 1976	-	Jury returns with following verdict: Count One - Guilty; Count Two - Not Guilty; Count Three - Not Guilty; Count Four - Guilty; Count Five - Guilty; Count Six - Not Guilty; Count Seven - Not Guilty; Count Eight - Guilty; Count Nine - Guilty; Count Ten - Not Guilty; Count Eleven - Guilty; Count Twelve - Guilty; Count Thirteen - Guilty; Count Fourteen - Guilty; Count Fifteen - Guilty; Jury is discharged; Sentence is deferred 4/26/76. Deft. reserves motions for one week.
April 19, 1976	-	Defendant's Motion for Judgment of Acquittal or New Trial filed
April 22, 1976	-	Decision of Court denying Defendant's Post Verdict Motion
May 10, 1976	-	Defendant is sentenced as follows: The Court: On each of Counts 1, 4, 5, 8, 9, 11, 12, 13, 14, 15, I impose a

sentence of two (2) years concurrent. I suspend the execution of the sentence and place the defendant on probation for a period of two (2) years concurrent. In addition on Counts 1, 4, 5, 8, and 15 I impose a fine of $1,000.00 on each count. The fine is to be paid.

May 18, 1976 - Defendant's Notice of Appeal is filed.

May 19, 1976 - Judgment of Conviction and Order of Probation filed.

DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION.

* * * * * *

2. All written records, papers, instruments and documents, or copies thereof, within the possession, custody or control of the government, which the attorney for the government will rely upon at the trial to prove the falsely claimed deductions and the amounts thereof, on the United States Income Tax Returns, for the taxpayers and calendar years, specified in Counts I through XII, inclusive, of the indictment.

3. All written records, papers, instruments and documents, or copies thereof, within the possession, custody or control of the government, which the attorney for the government will rely upon at the trial to prove the falsely claimed items of income and the amounts thereof, on the United States Income Tax Returns, for the taxpayers and calendar years, specified in Counts V and XIII of the Indictment.

4. All written records, papers, instruments and documents, or copies thereof, within the possession, custody or control of the government, which the attorneys for the government will rely upon at the trial to prove

the claimed correct amounts of deductions and income, on the United States Income Tax Returns, for the taxpayers and calendar years, specified in Counts I through XIII, inclusive, of the Indictment.

* * * * * *

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY AND INSPECTION.

* * * * * *

2-4. The Government declines to provide the material requested in paragraphs 2 through 4. These matters are evidentiary matters which need not be disclosed by the Government prior to trial, especially since the defendant has failed to demonstrate the requisite relevancy and materiality as required by Rule 16(b) of the Federal Rules of Criminal Procedure.

* * * * * *

DECISION OF U.S. DISTRICT COURT JUDGE
HAROLD P. BURKE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES

- vs - CR: 74-265

WALTER R. CONLIN, SR.

David G. Larimer
Assistant United States Attorney
for the Government

Walter J. Licata
45 Exchange Street
Rochester, N.Y. 14614
Attorney for defendant

By notice of motion filed December 9, 1974 the defendant moves for discovery and inspection and for a bill of particulars. On January 9, 1975 the government filed its response to the motion. By letter dated January 17, 1975 from Walter J. Licata, defendant's attorney, it appears that the only issue before this court left for determination on this motion is the material requested in paragraphs 2, 3, and 4 of the notice of motion. Upon due consideration it is hereby

ORDERED that the motion is in all respects denied.

s/ Harold P. Burke
HAROLD P. BURKE
United States District Judge

June 11, 1975.

DEFENDANT'S REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATE OF AMERICA

-vs- CR. NO. 74-265

WALTER R. CONLIN,
Defendant.

DEFENDANT'S REQUESTS TO CHARGE
IN CONNECTION WITH COUNTS I - XIII OF THE INDICTMENT

REQUEST NO. 1

The indictment will be given to you to take into the Jury Room as a guide to help you in your vote. The indictment in this case is no evidence whatsoever of guilt and is not to be construed by you as any indication of guilt. It is the method of our system of law by which a defendant is formally notified of the charges against him so that he may definitely know the charges and be able to formulate his defense and to make sure that he is not charged again for the same acts.

REQUEST NO. 2

In any criminal case there are two types of evidence upon which the jury comes to the conclusion about the facts in the case, direct evidence and circumstantial evidence. Direct evidence is what did a witness hear at a particular time, what die he see, what did he observe, what did he do. On the other hand, the Government wants you also to consider circumstantial evidence from certain facts and documents which have been received in evidence and which you may consider to have been

proven. It is up to you in that instance to determine whether something is proven or not; you may then arrive at certain conclusions based upon the facts which have been proven and using certain inferences which are reasonable. However, when you have circumstantial evidence, and you have a number of inferences which can reasonably be drawn, you must be very careful in the way that you handle it and if there are inferences which point just as reasonably to innocence as they do to guilt, then in a criminal case such as this, you must adopt and accept the inference that points to innocence.

REQUEST NO. 3

The law presumes the defendant to be innocent of any crime. Thus, the defendant, although accused, begins the trial with a "clean slate" - with no evidence against him. The law permits nothing but legal evidence put before the jury to be considered in support of any charge against the accused. The presumption of innocence may be overcome only by evidence which establishes his guilt beyond a reasonable doubt. The prosecution has the burden of establishing the guilt of the defendant beyond a reasonable doubt as to each count of the indictment. The burden of establishing guilt beyond a reasonable doubt is always upon and rests on the prosecution until the very end of the case. The burden of proof never shifts to the defendant to prove his own innocence. The law in a criminal case never imposes upon a

defendant the burden of producing any evidence whatsoever or of calling any witnesses. You should be very careful in your deliberation not to impose any burden on the defendant. You must remember that the prosecution has the burden of proving each and every element of each of the crimes charged in the indictment, beyond a reasonable doubt.

REQUEST NO. 4

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the evidence. A reasonable doubt exists whenever, after careful consideration of all the evidence in the case, you the jurors do not feel convinced to a moral certainty that the defendant is guilty of the charge. So, if you the jury view the evidence in the case as reasonable permitting either of two conclusions - one of innocence, the other of guilt - you must adopt the conclusion of innocence. In order to arrive at a verdict of guilt you must conclude that the state of the evidence is such as to exclude every reasonable explanation except that of guilt.

REQUEST NO. 5

In order to find the defendant guilty of Counts I through XIII of the indictment, the prosecution must prove beyond a reasonable doubt each and every one of the following three elements:

(1) That the defendant either assisted or procured or

counseled or advised or caused the preparation or presentation of a return in connection with a matter arising under the Internal Revenue Code, and

(2) That the return was false or fraudulent as to a material matter, and

(3) That the defendant acted unlawfully and that he acted with the actual knowledge that the return was false or fraudulent as to material matter and also that he acted willfully, that is to say that he acted with specific criminal intent of disobeying or disregarding the law.

REQUEST NO. 6

A tax return is false or fraudulent if it was untrue when made and was then known to be untrue by the person preparing it, and if it was made and prepared with the specific criminal intent to deceive.

The preparing of false or fraudulent tax returns is willful if it is done purposefully and with the specific intent of not preparing the return as required by law, that is to say with the specific purpose of disobeying or disregarding the Law.

An act or failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done. That is, with bad purpose or evil motive.

DEFENDANT'S REQUEST TO CHARGE

REQUEST NO. 7

The defendant is charged with preparing false or fraudulent income tax returns containing alleged willful overstatements of the amount of deductions and alleged willful understatements of the amount of items of income allowed by law. The evidence in the case need not establish beyond a reasonable doubt that the alleged criminal deductions and items of income, and the alleged correct deductions and items of income total the exact amounts stated in the indictment. However, the prosecution must prove beyond a reasonable doubt that the defendant willfully overstated deductions or understated income in substantial amounts. Whether the amounts are substantial depends upon the facts, circumstances and conditions shown by the evidence in this particular case and are for you the jury to determine.

REQUEST NO. 8

Actual knowledge by the defendant of the falsity of the income tax returns is an essential element of the crime charged in the indictment. The statement on the income tax returns above the preparer's signature states that his declaration is based on information of which he has knowledge. You may not find the defendant guilty unless you find that he did have actual knowledge that the entries on the tax return were false or fraudulent. The prosecution has not met its burden of proof if it only shows that the defendant may have suspected or

thought that the entries were unlawful because he was not required to make an audit or investigate the information told to him by the taxpayers.

REQUEST NO. 9

The defendant cannot be found guilty of the crimes charged in the indictment if you find that he acted innocently or that any incorrect entries on the returns were the result of error, oversight, forgetfulness, inadvertence, carelessness, poor handling of details, negligence or even gross negligence.

REQUEST NO. 10

If you are unable to determine from the evidence whether or not the defendant prepared the income tax returns in the honest belief that the returns were true and correct or whether or not the defendant was acting under a mistake of fact or law, or was in ignorance of, the truth or falsity thereof, you must find the defendant not guilty as to that count of the indictment.

REQUEST NO. 11

If you find that the defendant, in good faith, believes that the income tax returns prepared by him truthfully report the income and deductions of the taxpayers, he cannot be guilty of willfully preparing or causing to be prepared a false or fraudulent return as charged in that count of the indictment.

DEFENDANT'S REQUEST TO CHARGE

REQUEST NO. 12

You as the jurors are the sole judges of the credibility of the witnesses. You are the sole judges of the facts. It is the duty of the Court to instruct you as to what the law is so that you can apply the law to the facts as you find them. It is your duty to accept the law as the Court instructs you.

REQUEST NO. 13

You are not obligated to accept the testimony of any witness even though it is uncontradicted. The weight of evidence is not determined by the number of witnesses testifying on either side. In this case you have heard testimony from employees of the Small Business Administration, the Federal Bureau of Investigation and the Internal Revenue Service, and you are hereby instructed that you are not to give the testimony of any of these witnesses any greater weight merely because they are employees of the government.

REQUEST NO. 14

You will recall that one of the prosecution's witnesses, Mr. Matyjakowski, testified in connection with a schedule which he prepared. The schedule which he prepared, a copy of which was handed to each of you, is not evidence in the usual sense. It does not purport to be original evidence and it is not in and of itself evidence or proof of any facts. You will recall that he testified that the figures on the schedule were his

opinion of the civil tax liability which he would assess if he were conducting a civil tax audit of the individual taxpayers. He stated that if he were auditing the returns, he would not allow the claimed items of deduction and would add the claimed omitted items of income as shown on his schedule. By his own admission he stated that his schedule has no relation to whether or not the defendant had any knowledge of the truth or falsity of the entries on the tax returns. Knowledge of the defendant, of course, is an essential element of the alleged crimes. If you find that the schedule does not correctly reflect the facts or figures shown by the evidence in this case or bears no relationship to the essential elements of the crimes alleged in the indictment, you are to disregard the schedule and his testimony in its entirety.

REQUEST NO. 15

In this case we have heard testimony from three witnesses who have testified to the defendant's good reputation for truth, honesty and good character. These witnesses are commonly referred to as character witnesses. Evidence of the defendant's character is in the same category as other factual evidence and must be considered by you in your deliberations. Evidence of good character, when considered in connection with the other evidence, might be sufficient to give a reasonable doubt as to the guilt of the defendant. In fact, evidence of good character

and reputation as introduced by defendant in this case, if believed by you, alone without anything more, may create a reasonable doubt as to the guilt of the defendant. Evidence of the defendant's reputation inconsistent with those traits of character ordinarily involved in the commission of the crime charged may give rise to a reasonable doubt.

DATED: Rochester, New York, April 2, 1976.

Respectfully submitted,

DAVID M. LEVY
Attorney for Walter R. Conlin
1025 Times Square Building
Rochester, New York 14614

DEFENDANT'S REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-vs- CR. NO. 74-265

WALTER R. CONLIN,
Defendant.

DEFENDANT' SUPPLEMENTAL REQUESTS TO CHARGE
IN CONNECTION WITH
COUNTS I - XIII AND COUNTS XIV - XV OF THE INDICTMENT

REQUEST NO. 16

Note that we are not here to determine any civil liability. When I use the term "civil liability" I mean the actual amount of tax dollars, if any, which the taxpayers may owe because of any overstatement of deductions or omissions of income for any reason. The determination of the taxpayers' correct income tax liability is the subject of civil proceedings, which are completely different from this case. We are here only to determine whether there has been a criminal violation with respect to the preparation of the tax returns for 1972 and 1973, and if you acquit the defendant on these criminal charges, it does not have any bearing on taxpayers' civil tax liability. As I have said, that is the subject of separate proceedings, and it is not your function to determine how much, if anything, they owe, but merely whether the defendant has violated the criminal laws.

The point in time which we are concerned with is the time that the returns were prepared. That is the time when you must

determine whether or not the defendant had the specific criminal intent.

If you find that the defendant believed that the returns were true and accurate when prepared, he cannot be held responsible criminally, even though at a later date, facts come to his attention which he did not have access to at the time of preparing the return which indicate that the return was not true and accurate.

I have just said this, but perhaps I should say it again. The defendant's acts in connection with the income tax returns are not willful if they were done through inadvertence, carelessness, honest misunderstanding of what was required or as a result of his good faith reliance on the information given to him by the taxpayers.

DEFENDANT'S REQUEST TO CHARGE.

REQUEST NO. 17

In connection with the first thirteen counts of the indictment, if you find that the defendant made incorrect interpretations of the civil tax consequences of the transactions stated to him by the taxpayers but that he fully reported on the tax returns all relevant information affecting the transactions then you must find defendant not guilty as to those counts of the indictment.

REQUEST NO. 18

If you find that the before and after values contained in Mr. Brush's appraisal reports were made by Mr. Brush without any collusion with the defendant, then you must find that the defendant had the right to rely on those appraisals regardless of whether or not they were correct.

REQUEST NO. 19

The defendant is not on trial for any act or conduct not alleged in the indictment and you cannot convict him of any violation not charged in the indictment.

REQUEST NO. 20

In connection with the destruction of the purported copies of the Gill 1970 and 1971 tax returns, the prosecution must prove beyond a reasonable doubt the following three essential elements to establish the crime charged in Count XIV of the indictment.

DEFENDANT'S REQUEST TO CHARGE.

First, they must prove the act or acts of removing, mutilating and destroying records and documents filed or deposited with a public office of the United States. Second, they must prove the accused did such acts with full knowledge that at the time of the acts the records or documents had been filed or deposited and were still filed or deposited in a public office of the United States. Third, they must prove the accused acted knowingly, willfully and with the specific criminal intent of disobeying or disregarding the law.

REQUEST NO. 21

Defendant claims that the papers or documents which he destroyed were papers or documents that he brought with him to the Small Business Administration Office in Elmira on the morning of January 18, 1974. If you find as a fact that he did bring them with him, then the papers and documents had not been filed with the Small Business Administration and you must find him not guilty.

REQUEST NO. 22

If you find that the papers and documents had been filed with the Small Business Administration prior to January 18, 1974, and that the defendant relied on the statement of Small Business Administration officials that he could remove the papers and documents if Mr. Gill's application was withdrawn, and the

defendant acted upon that statement and the written withdrawal of the application by Mr. Gill, then the accused lacked the specific criminal intent necessary to convict and you must find him not guilty.

REQUEST NO. 23

In connection with Count XV of the indictment, the defendant is charged with submitting with his Sm 11 Business Administration application for a Disaster Loan a document which he represented to be a copy of his 1971 tax return although at that time the defendant had not filed his 1971 tax return.

Three essential elements are required to be proven in order to establish the crime charged in the indictment: First, the act or acts of making a false representation in relation to a matter within the jurisdiction of a department or agency of the United States, as charges; Second, making such representation with knowledge of the accused that the writing or document was false or fictitious and fraudulent in some material particular, as alleged; and Third, doing such act or acts knowingly, willfully, and with specific criminal intent of disobeying or disregarding the law. As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

DEFENDANT'S REQUEST TO CHARGE.

REQUEST NO. 24

Defendant testified that at the time that he submitted the purported copy of his 1971 tax return to the Small Business Administration, he stated to them that he had a valid extension of time to file his 1971 return and that that purported copy of the 1971 return was only an estimate. Defendant's testimony was uncontroverted. You will recall that Mr. Cristofaro testified that the Small Business Administration did accept at least 100 unsigned tax returns in connection with disaster loan applications. If you find that the purported 1971 tax return was accepted by the Small Business Administration with the understanding that it was an unsigned, unfiled return, then you must find the defendant not guilty.

REQUEST NO. 25

The prosecution must prove beyond a reasonable doubt that the defendant submitted the purported 1971 tax return to the Small Business Administration with the specific criminal intent to deceive the Small Business Administration. It is undisputed that the defendant did in fact file his 1971 return in the exact same form as the purported return which he submitted to the Small Business Administration. You may consider this fact in determining whether the defendant criminally intended to deceive the Small Business Administration and if you find that such specific criminal intent is lacking, then you must find the

defendant not guilty.

DATED: Rochester, New York, April 5, 1976

Respectfully submitted,

DAVID M. LEVY
Attorney for Walter R. Conlin
1025 Times Square Building
Rochester, New York 14614

DEFENDANT'S REQUEST TO CHARGE.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

-vs- CR. NO. 74-265

WALTER R. CONLIN,

Defendant.

DEFENDANT'S ADDITIONAL REQUESTS TO CHARGE

REQUEST NO. 26

Whenever the fact appears beyond a reasonable doubt from the evidence in the case that the taxpayer signed his tax return, the jury may draw the inference and find that the taxpayer had knowledge of the contents of the return.

REQUEST NO. 27

The cost of ordinary clothing can be allowed as a deduction from gross income if clothing has not been used for general use regardless of whether it is suitable for general use. Oswald "Ozzie" G. Nelson and Harriet Hillard Nelson v. Commissioner, T. C. Memo 1966-224 (copy attached).

DATED: Rochester, New York, April 6, 1976

Respectfully submitted,

DAVID M. LEVY
Attorney for Walter R. Conlin
1025 Times Square Building
Rochester, New York 14614

GOVERNMENT'S EXHIBIT 3A.

I HEREBY WITHDRAW
MY APPLICATION.

Thomas J. Gill

GOVERNMENT'S EXHIBIT 60.

(Flood damage ?
Personal Property damage — $1532.61
S.B.A. paid — $1300.00)

Insurance

John Hancock Mutual Life — $19.50 pr. mo. (Charles $10,000. value)
Metropolitan Life — $18.95 pr. mo. (Mary + Robert $5,000. + $2,000.)
Blue Cross + Blue Shield — $18.56 pr. mo. (Family)

Hardin ?
Travel to 2nd Job - 15 miles pr. day
Civil Defense Volunteer work for 2 weeks at West High in First Aid Station (14 miles a day.)
Baby sitter for 7 yr. old son. $15.00 pr. wk. for 10 mo.
$25.00 pr. wk. for 2 mos.
Telephone for on call Corning Hospital (Bills about $15. pr. mo.)
Uniforms and shoes and Conductive Shoes for O.R. (Some for replacement of some lost in flood at Hospital) $300.00
Girdles, Support Hose and Reg. Hose — $200.00
Tax on New Furniture — $50.00
Tax on 4 New Tires - 2 for Car - 2 for truck — $15.00
Tax on Honda — $32.00

Charitable Contributions

Coton Methodist Church — $50.00
United Fund (both) — $50.00
Heart Fund — $25.00
Boy Scouts — $20.00
Cancer Fund — $10.00
Salk Army — $50.00

GOVERNMENT'S EXHIBIT 68.

NAME OF TAXPAYER	AMOUNT CLAIMED PER RETURN	AMOUNT PER EVIDENCE	ADJUSTMENT
(1) LEWIS & EGIDIA ROSS - 1972			
MEDICAL EXPENSES:			
a) DR. ROESLOFF	$ 12000	$ 2000	$ 10000
b) DR. DARLING	2500	-0-	2500
c) DR. OTTO	7000	-0-	7000
INTEREST EXPENSE:			
a) INSTALLMENT PURCHASE.	9412	-0-	9412
CASUALTY LOSSES	806005	-0-	306005
TOTAL			$ 534717
(2) CASPER & LELIA MINIER - 1972			
TAXES:			
a) STATE & LOCAL GASOLINE	$ 27300	$ 8900	$ 18400
CONTRIBUTIONS:			
a) METHODIST CHURCH	10400	1600	2200
CASUALTY LOSSES	660136	-0-	660136
TOTAL			$ 687336
(3) ARTHUR & JANE LAMB - 1972			
MEDICAL EXPENSES:			
a) MEDICINES & DRUGS	$ 34900	$ 29500	$ 5400
TAXES:			
a) STATE & LOCAL GASOLINE	32200	7700	24500
CONTRIBUTIONS	25860	8360	17500
INTEREST EXPENSES:			
a) INSTALLMENT PURCHASES	9212	-0-	9212
b) MACHINE RICHARD	12314	-0-	12314
c) BANK AMERICARD	10100	100	10000
MISCELLANEOUS DEDUCTIONS:			
a) NO. SIDE BUSINESS CLUB	3000	-0-	3000
b) NO. SIDE LUNCH MEETINGS	7350	-0-	2350
TOTAL			$ 89216
(4) ADRIAN & EDNA VAN ALSTINE - 1972			
TAXES			
a) STATE & LOCAL GASOLINE	$ 25800	$ 14400	$ 11400
INTEREST EXPENSE			
a) INSTALLMENT PURCHASES	9814	-0-	9214
CASUALTY LOSSES	290000	-0-	290000
MISCELLANEOUS DEDUCTIONS			
a) SAFETY SHOES	6144	3072	3072
TOTAL			$ 314286

GOVERNMENT'S EXHIBIT 68.

NAME OF TAXPAYER	AMOUNT CLAIMED PER RETURN	AMOUNT PER COMPUTATION	DISALLOWANCE
(5) ANTHONY & RUTH BOSSNEY - 1972			
TAXES			
a) STATE & LOCAL GASOLINE	$ 34400	$ 20000	$ 14400
b) SALES TAX ON NEW MOTOR VEHICLE	4928	-0-	4928
INTEREST EXPENSE			
a) INSTALLMENT PURCHASES	9814	-0-	9814
TOTAL			$ 29142
(6) PAUL & VICKI CAPATTONI - 1972			
RENTAL INCOME	$ -0-	114000	$ 114000
BUSINESS MILEAGE	132168	-0-	132168
CASUALTY LOSSES	290000	-0-	290000
MISCELLANEOUS DEDUCTIONS			
a) UNION DUES	10000	-0-	10000
TOTAL			$ 546168
(7) GARY & CAROL WARNER - 1972			
MEDICAL EXPENSES	$ 15000	$ 3900	$ 11100
TAXES			
a) STATE & LOCAL GASOLINE	19700	7000	12700
b) REAL ESTATE	14400	-0-	14400
INTEREST EXPENSES			
a) HOME MORTGAGE	5164 6	-0-	51646
CASUALTY LOSSES	421000	-0-	420000
TOTAL			$ 509546
(8) HERMAN & JUDITH CLARK - 1972			
MEDICAL EXPENSES	$ 41290	$ 21575	$ 20215
INTEREST EXPENSE			
a) INSTALLMENT PURCHASES	9214	-0-	9214
b) CHECKING CASH TRUST	7240	-0-	7240
MISCELLANEOUS DEDUCTIONS			
a) DUES & FEES	280	-0-	2800
b) TAX PREP FEE	11400	7100	4300
BUSINESS EXPENSES			
a) FISHING CAR LIGHT	2800	-0-	2800
TOTAL			$ 46671
(9) LARRY & JOANNE MADDEN - 1972			
MISCELLANEOUS DEDUCTIONS			
a) CLOTHING	$ 174732	-0-	$ 174732

GOVERNMENT'S EXHIBIT 68.

	NAME OF TAXPAYER	AMOUNT CLAIMED PER RETURN	AMOUNT PER EVIDENCE	ADJUSTMENT
(10)	LINDBERGH & JANE Payne - 1972			
	TAXES:			
	a) REAL ESTATE TAXES	$ 51281	$ -0-	$ 51281
	INTEREST EXPENSE:			
	a) LINCOLN FIRST BANK	11718	-	11718
	CASUALTY LOSSES	410000	110000	300000
	CONTRIBUTIONS:			
	a) ST. VINCENT CHURCH	20800	5200	15600
	b) EASTER OFFERING	2000	500	1500
	c) LENT OFFERINGS	1200	-0-	1200
	d) Bishop RELIEF	1500	500	1000
	e) WORLDWIDE Communion	500	-0-	500
	f) WORLD DAY OF PRAYER	500	-0-	500
	TOTAL			$ 383299
(11)	CHARLES & MARY Ryder - 1972			
	CASUALTY LOSSES	$ 328283	$ 13261	$ 315022
	TAXES			
	a) STATE & LOCAL GASOLINE	29900	16100	13800
	b) SALES TAX ON BOAT MATERIAL	14100	-0-	14100
	CHILD CARE DEDUCTION	118000	88000	30000
	CONTRIBUTIONS			
	a) METHODIST CHURCH	8800	5000	3800
	b) SUNDAY SCHOOL	1100	-0-	1100
	c) LENT	600	-0-	600
	d) EASTER	2000	-0-	2000
	e) CHRISTMAS	1000	-0-	1000
	f) THANKSGIVING	500	-0-	500
	g) MISSIONS	2000	-0-	2000
	h) ONE GREAT HOUR OF SHAR	500	-0-	500
	i) WORLD DAY OF PRAYER	500	-0-	500
	j) WORLDWIDE Communion	1000	-0-	1000
	k) MIGRANT FUND	200	-0-	200
	l) CIVIL DEFENSE	13720	1372	12348
	TOTAL			$ 39847

GOVERNMENT'S EXHIBIT 68.

	NAME OF TAXPAYER	AMOUNT CLAIMED PER RETURN	AMOUNT PER EVIDENCE	ADJUSTMENT
(14)	RICHARD EARL WENDERLICH - 1972			
	CASUALTY LOSSES	$ 950000	-0-	$ 950000
	DEPRECIATION	936159	124400	811759
	TOTAL			$ 1761711
	RICHARD EARL WENDERLICH - 1973			
	GROSS RECEIPTS OR SALES	$ 4512050	5421448	834398
	INTEREST INCOME	28015	121941	93926
	TOTAL			$ 928324

DEFENDANT'S EXHIBIT 2.

U. S. GOVERNMENT
SMALL BUSINESS ADMINISTRATION
1051 South Main Street
Elmira, New York 14904

DATE January 18, 1971

REPLY TO
ATTN OF James J. Cri[illegible] - Loan Officer

SUBJECT Reconsideration of Application

TO Thomas J. Gill

The following information is needed in order to submit your request for reconsideration:

Form 5 - Complete all items.

Form 413 - Complete all items.

Form 824 - in triplicate - with documents and invoices to support machinery, equipment and inventory estimates of loss. All supporting documents must be pre-flood.

A written request for reconsideration of application withdrawn by the SBA on April 12, 1973. Include detailed explanations and reasons for the delay in submitting data.

It may be necessary to verify the accuracy of the figures on your Tax Returns. Therefore, the SBA would like to have written permission from you to verify the accuracy of your tax returns with the Internal Revenue Service. It would be helpful if you requested stamped copies from the IRS and delivered them to us.

Copies of Federal Tax Returns for 1972 and 1973, Current Balance Sheet and Profit and Loss Statement.

All data submitted to this Agency must be signed and dated.

When you are able to submit <u>all</u> of the required information and documents, this Agency will, at that time, make a determination as to whether or not to accept the application for reconsideration.

DEFENDANT'S EXHIBIT 2.

Mr. Thomas J. Gill
Page 2
January 18, 1974

If this Agency should decide not to accept your application, you may request in writing that previously submitted documents be returned to you.

James J. Cristofaro
Loan Officer

JJC/mmf

COURT'S INSTRUCTIONS TO THE JURY.

Rochester, New York

Wednesday, April 7, 1976

- - -

CHARGE OF THE COURT

THE COURT: Members of the Jury:

This indictment was filed October 10, 1974. It contains fifteen separate counts, or charges, against the defendant.

The first count charges that Conlin wilfully aided and assisted the preparation and presentation to the Internal Revenue Service of income tax returns for taxpayers which were fraudulent and false as to material matters in that they represented that the taxpayers were entitled to claim deductions for certain items, whereas Conlin then well knew that the taxpayers were not entitled to claim the deductions, and further, that the returns represented that the taxpayers received a certain amount of income, whereas Conlin well knew the taxpayers had received greater amounts of income than reported.

Count 1 deals with the 1972 tax returns of Mary and Charles Ryder and deals with allegedly

false claim items for casualty loss, gasoline taxes, sales taxes and child care expenses.

Count 2 is a similar count to Count 1, but it deals with the 1972 tax returns of Lindbergh and Jane Payne and deals with allegedly false claims for real estate taxes, for interest expense, and for casualty loss.

Count 3 is a similar count, but it deals with the 1972 tax returns of Adrian and Edna Van Alstine and deals with allegedly false claims relating to gasoline taxes, interest expenses and casualty loss.

Count 4 is a similar count, but it deals with the 1972 tax returns of Lewis and Estella B[illegible] and deals with allegedly false medical expense claims, interest expense and casualty loss.

Count 5 is a similar count, but it deals with the 1972 tax returns of Paul and Vicki Caraczzoni and deals with allegedly false claims of union dues paid, casualty loss, and rental income.

Count 6 is a similar count, but it deals with the 1972 tax returns of Anthony and Ruth Bassney and allegedly false claims for gasoline

taxes, sales taxes and interest expense.

Count 7 is a similar count, but it deals with the 1972 tax returns of Caspar and Lelia Minier and deals with allegedly false claims for gasoline taxes and casualty loss.

Count 8 is a similar count, but it deals with the 1972 tax returns of Jane and Arthur Lamb and particularly with alleged false claims for medical and dental expenses and drugs, for gasoline taxes and interest expense, for contributions and for miscellaneous business deductions.

Count 9 is a similar count but deals with the 1972 tax returns of Herman and Judith Clark and with allegedly false claims for medical and dental expenses and drugs, for interest expense, for deductions of dues and for tax preparation and for certain business expenses.

Count 10 is a similar count, but it deals with the 1972 tax returns of Larry and Joanne Madden and with allegedly false claims for medical and dental expenses, for deductions of clothing for business.

Count 11 is a similar count, but it deals

with the 1972 tax returns of Gary and Carol Warner and with allegedly false claims for medical and dental expenses, for real estate and gasoline taxes, for interest expense and for casualty loss.

Count 12 is a similar count, but it deals with the 1972 tax returns of Mrs. Wuenderlich and for allegedly false claims for casualty loss and depreciation.

Count 13 deals with the 1973 tax returns of Mrs. Wuenderlich and particularly with allegedly false claims for gross sales and interest income.

The statute involved in these first thirteen counts of the indictment, all dealing with different taxpayers, provides that whoever wilfully aids or assists or advises the preparation or presentation in connection with any matter arising under the Internal Revenue laws of a return which is fraudulent, as to any material matter, whether or not such fraud is with the knowledge or consent of the person authorized or required to present such return, shall be guilty of a felony, and upon conviction shall be subject to the punishment provided by the statute.

The first element in regard to these charges contained in the first thirteen counts of the indictment, all against different taxpayers, means that the government must prove beyond a reasonable doubt that, even if Conlin did assist and advise the preparation or presentation of the matters within these thirteen counts that were false, he must have done so wilfully. That means with criminal or evil intent of violating the statute. There may be no conviction unless criminal intent in regard to each of these first thirteen counts is established beyond a reasonable doubt.

Conlin could not be found guilty as to any one of these first thirteen counts in the absence of proof that what he did was done with criminal intent. If what he did in reference to these first thirteen counts amounted to no more than negligence or carelessness, or mistake, or innocently, or even with gross negligence or gross carelessness, he could not be found guilty, because in such circumstances there would be lacking the proof of criminal intent.

The first count deals with the 1972 tax

return of the Ryders. Conlin prepared their 1972 return. When Mary Ryder went to Conlin, she had a work sheet dealing with the information for her 1972 return. She said she told Conlin that they had two vehicles and that they drove 27,000 or 28,000 miles during 1972. One of the items in the tax return was a deduction for sales tax on building materials. She said she told Conlin that they did not own their own home and that there was no sales tax on building materials. She said she told him that she paid fifteen dollars a week for child care.

The item that went into the tax return was a total for child care of $1,180. There were a number of items for contributions to churches and charities which were not, she said, in accordance with what she told Conlin.

She said she told Conlin that she had a loss of personal items due to the flood amounting to $1,532. She said she got a loan from the Small Business Administration in the amount of $1,300.

You will recall that when a taxpayer got

a loan to cover a casualty loss, that if the loan was less than $5,000, there was a forgiveness of the loan. That means that taxpayers did not have to pay back the amount of the loan.

When the 1972 returns were prepared, Conlin put in a casualty loss of $3,300, and there was no information that Mrs. Ryder had obtained a Small Business loan in the amount of $1,300.

The Internal Revenue Service Code allows a deduction from taxable income of any loss sustained during the taxable year and not compensated for by insurance or otherwise. When a taxpayer sustains a casualty loss and obtains a loan from the Small Business Administration to cover the casualty loss, if the loan is less than $5,000, the taxpayer does not have to pay back the amount of the loan. That means that the casualty loss is compensated for by a loan from the Small Business Administration which the taxpayer does not have to pay back.

In such a case, it is the duty of the taxpayer to inform the Internal Revenue Service whether a casualty loss has been compensated for

by a forgiveness loan from the Small Business Administration in order that the Internal Revenue Service may determine whether the casualty loss has been compensated for by a loan from the Small Business Administration.

If the 1972 tax return of the Ryders contained false and fraudulent information and that Conlin wilfully and intentionally assisted and advised the preparation of the return containing the fraudulent matter, and if these things are proven beyond a reasonable doubt, that would be sufficient to warrant a finding of guilty on the first count of the indictment.

Conlin testified that Mary Ryder gave him a figure for a casualty loss of $5,000 more than her application for a loan to the Small Business Administration. He said that she gave him in relation to the reduction of her gasoline tax the mileage in detail for three vehicles. In regard to child care, he said that she specifically gave him the figure of $1,180.

The second count deals with the 1972 tax returns of Lindbergh and Jane Payne. Conlin

prepared the 1971 and 1972 returns of the Paynes. Mrs. Payne had a work sheet when she went to see Conlin about preparing the 1972 return. She said that she did not furnish Conlin with the amount that was taken as a deduction for medical expenses. She denies telling him that their taxes for 1972 were $512. The amount appearing on the return for casualty loss was $4,100. She said that this was incorrect and that she had told Conlin that the correct amount of the casualty loss was $1,100.

You will have to determine on all the evidence whether the 1972 return contained false and fraudulent information, and if so, whether Conlin wilfully and with criminal intent aided, assisted and advised in the preparation of the return. If the evidence establishes beyond a reasonable doubt that Conlin wilfully and with criminal intent aided, assisted or advised in the preparation of the 1972 return of the Paynes in connection with any matter arising under the Internal Revenue Laws, and if that matter was fraudulent as to any material matter, that would be sufficient to warrant a finding of guilty

against Conlin on the second count of the indictment.

Conlin testified that when he had the interview with Jane Payne regarding the 1972 return that they had before them the Paynes' 1971 return. He said that she and her husband came for an interview later with a work sheet. In the interview for the 1971 return, she had informed Conlin that her name was on the deed along with her father so that she was the owner of the real estate in 1971. He said that in 1972 she gave him figures for taxes she had paid on the real estate. He said that she gave him details of the damage to the house but that she said she would have to guess at the amount of the damage, and he said she estimated that there was a $3,000 drop in market value of the house due to flood damage and that that was the figure used in the 1972 return. He said she gave him the amount paid for interest in 1972 as $117.18.

The third count deals with the 1972 return of Adrian and Edna Van Alstine. Adrian Van Alstine testified that Conlin prepared their

1971 and 1972 tax returns. He testified that he told Conlin that he had a certain amount of seepage into his cellar from the flood and that Conlin suggested a figure of $3,000 loss due to damage from the flood.

In the return there appeared a claim for deduction in the amount of $60 for two pairs of safety shoes. He denied that he told Conlin that he had bought safety shoes.

Conlin testified that they had the 1971 return of the Van Alstines before them in the interview for the 1972 return. In the 1971 return there were two vehicles, and in the 1972 return there were also two vehicles. He said Van Alstine had given him the mileage figure for the two vehicles as twenty-seven thousand and eighteen thousand, and that that was the figure used to compute the gasoline tax.

He said that Van Alstine gave him the figure of $98 for interest paid in 1972. He said that Van Alstine said that they had water four feet deep in the cellar at the flood. He said he urged an appraisal, but they did not want one,

and that Van Alstine estimated a $3,000 drop in market value because of the flood. He said later Van Alstine brought in a note and told him not to use the $3,000 figure for a loss. He said that he pointed out to Van Alstine that the tax return was not a public document. Then he said in view of that, Van Alstine told him to use the $3,000 figure for casualty loss.

In regard to the safety shoes, he said the 1971 return had shown the purchase of two pairs of safety shoes for approximately $60 and that Van Alstine said that in 1972 there were also purchased two pairs of safety shoes, so he took the figure of about $61.

You will have to determine on all the evidence whether the proof has established beyond a reasonable doubt that the Van Alstine return contained false and fraudulent matter and whether Conlin, with criminal intent, aided, assisted and advised the Van Alstines in connection with the preparation of such false and fraudulent matter. If so, that would be sufficient to warrant a finding of guilty against Conlin on

the third count of the indictment.

The fourth count deals with the 1972 return of Lewis and Estelle Ross. Estelle Ross testified that Conlin prepared their 1971 and 1972 returns and that she had a work sheet containing pertinent information when she went to see Conlin in regard to the prepar tion of the 1972 return.

In the Ross return there was taken as a casualty loss the amount of $8,060. She denied telling Conlin that they had sustained a casualty loss in 1972 of $8,060.

There was also a medical expense for Dr. Bresloff in the amount of $120 taken as a deduction. She testified that she did not tell Conlin that Dr. Bresloff bill was $120 but that it, in reality, was $20. There was also a claimed deduction for a medical bill to Dr. Ober in the amount of $70. She denied telling Conlin that she told him that they had paid anything to Dr. Ober in 1972.

Conlin testified that Mrs. Ross did not give him the work sheet which she had but gave

him figures from it. He said they went through the 1971 return item by item. He said she gave him the specific figure of $94.12 for interest in 1972.

As to casualty loss, he said she had a list of items of personal damage and that he took three quarters of the total of her list for a casualty loss figure on personal property. As to the casualty loss on real estate, he said she informed him that they had four and one-half feet of water in the cellar at the flood. He said he urged an appraisal but that she said they did not want an appraisal and that she estimated a difference in market value of the property before and after the flood as $5,000.

In regard to doctors' bills, he said that they went over the doctors' bills paid in 1972, and he said she said specifically they were as set forth in the 1972 return and that the figures came from her.

You will have to determine on all the evidence whether Conlin, with criminal intent, assisted, aided and advised in the preparation

and presentation of false and fraudulent matters in the 1972 returns of Lewis and Estella Ross and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on the fourth count of the indictment.

The fifth count of the indictment deals with the 1972 tax return of Paul and Vicki Caroczzoni, and particularly with the rental income for 1972, which was zero amount reported, with the business mileage claimed in the return of $1,321.68, with the casualty loss which was reported at $2,900, and with union dues, which were reported as paid in the amount of $100.

Paul Caroczzoni testified that Conlin prepared their 1972 return. He testified that he did have income property. He testified that he didn't know when he first talked to Conlin about the 1972 return, whether he had paid a union fee in 1972.

He testified that he had wall damage to his cellar, which was estimated by a contractor to repair at a cost of $1,500. He got a

loan from the Small Business Administration to cover that loss in the amount of $1,500. The casualty loss was reported in the return as $2,900.

Conlin said he interviewed both Mr. and Mrs. Caroczzoni, once in January, 1971, and the second time in April, 1973. In the first interview they were not sure that he had paid a union fee, and they said they would have to find out. Later he said they informed him that he did pay the union fee in 1972.

In regard to the casualty loss, he said they informed him that the flood water undermined the steps and caused the walls to bulge. He said he urged an appraisal, and he gave them the names of three realtors suggested as appraisers. He said they chose Brush to make the appraisal. He said that on his work sheet there was no notation of any application for a Small Business Administration loan. The Brush appraisal showed a difference in market value due to the flood of $3,000, which is the figure that they told him to put in the return. He said there was no

talk between them of rental income. He said they still have a case pending in the Tax Court regarding the disputed items.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation and presentation of false and fraudulent matters in the 1972 return of the Carozzonis, and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on the fifth count of the indictment.

The sixth count deals with the 1972 tax return of Anthony and Ruth Bassney, and particularly with claimed amounts for gasoline taxes, for sales tax on building materials, and for interest expense.

Anthony Bassney testified that Conlin prepared his 1972 return. He said that he told Conlin that he drove a little over 34,000 miles in 1972. He denied that he had told Conlin that the Bassneys had driven 56,000 miles in 1972. He denies that he told Conlin that he

had expended $98 for installment interest, and he denies that he told Conlin anything about sales tax on building materials.

Conlin said he interviewed Mr. Bassney on May 10, 1973, in regard to the 1972 return, and that in that interview Mr. Bassney gave Conlin mileage for two cars, twenty-four thousand and thirty-four thousand miles, and that that was the figure that he used in computing the gasoline tax.

In regard to the figure for building materials tax, he said that Bassney gave him particular figures totaling $704 for post-flood replacements and that he took seven per cent of the total of that in the amount of $49.28 as the sales tax on building materials.

He said they had before them at the interview the 1971 return and that Bassney told him the figures for interest were approximately the same in 1972 and he agreed that $98.14 was a proper figure.

You will have to determine on all the evidence whether Conlin, with criminal intent,

aided, assisted and advised the preparation and presentation of false and fraudulent matters in the 1972 return of the Bassneys, and whether those elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on the sixth count of the indictment.

The seventh count of the indictment deals with the 1972 tax return of Caspar and Lilia Minier and particularly with an amount claimed on the return of $273 for gasoline taxes, for an amount of $104 claimed as a contribution to the Methodist Church and for casualty losses of $6,601.36.

Caspar Minier testified that Conlin prepared his 1972 return and returns before that year. Lelia Minier also testified. Either he or his wife testified that they told Conlin that their contribution to the Methodist Church was $16 and not $104 as claimed in the return.

Conlin testified that he interviewed Caspar Minier in regard to the 1972 returns. He said they had before them the 1971 return. In regard to mileage, he said Minier told him that they drove 2,000 miles more than in 1971 and that they agreed that

mileage of 54,000 miles in 1972 was a proper figure in 1972 to compute the gasoline tax.

In regard to casualty loss, he said Minier submitted a list of casualty loss due to personal damage and that they used seventy per cent of the value shown on that list, which was a figure of $2,201.36, to which Minier agreed. He said Minier presented a real estate appraisal of the casualty loss on real estate showing a drop in value due to the flood of $4,500. He said his interview notes show no notation of any application to the Small Business Administration.

You will have to determine on all the evidence whether the 1972 return of the Miniers contained false and fraudulent information and if so, whether Coulin wilfully and with criminal intent aided, assisted and advised the preparation of the return.

If the evidence has established beyond a reasonable doubt that Coulin wilfully and with criminal intent aided, assisted and advised in the preparation of the 1972 return of the Miniers in connection with any matter arising under the Internal

Revenue laws, and if that matter was fraudulent as to any material matter, that would be sufficient to warrant a finding of guilty against Conlin on the seventh count of the indictment.

The eighth count of the indictment deals with the 1972 return of Jane and Arthur Lamb, and particularly with gasoline taxes, with interest expenses, and with miscellaneous deductions for Northside Business Club in the amount of $30 and for Northside lunch meetings in the amount of $73.50.

Jane Lamb testified that Conlin prepared their 1972 return and that she left with Conlin's secretary the written information pertinent to the preparation of the 1972 return.

Conlin testified that he interviewed Arthur Lamb on April 14, 1973, and that they had before them then the 1971 return and went over the figures shown in the 1971 return one by one. He said that the figures used for the 1972 return came from Arthur Lamb. He said that Arthur Lamb gave him the figure of $101 for BankAmericard interest, and he said the figure of one dollar given to Conlin by Mrs. Lamb was an error.

For medical expenses he said Arthur Lamb gave him the figure of $349. In regard to the gasoline tax, he said that Arthur Lamb said that they drove 3,000 miles less than in 1971 and that that was the mileage upon which the gasoline tax was computed.

He said that Arthur Lamb gave him the detailed interest of $92.32. He said Arthur Lamb told him the figures for expenses of business meetings and lunches were the same as in 1971 and that that was the figure agreed upon for 1972.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation of false and fraudulent matters in the 1972 tax return of the Lambs, and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on this eighth count of the indictment.

The ninth count of the indictment deals with the 1972 tax return of Herman and Judith Clark, and particularly with medical and dental expenses, interest expenses, miscellaneous deductions for dues

and tax preparation fees and a business expense for a flashing car light.

Herman Clark testified that Conlin prepared his 1972 returns. He said that he gave Conlin a summary sheet of the pertinent figures for his 1972 return. He denied that he gave Conlin the figure of $415 for medical expenses, the figure of $92.14 for interest on installment purchases, and the figure of sixty-one miles per day driving, or the figure of $28 for a flashing car light.

Conlin testified that he interviewed Herman Clark alone regarding the 1972 return. He said his wife had previously sent in some items. He said that in interviewing Herman Clark they had before them the 1971 return.

In regard to medical expenses he did not have the figure but called him later by telephone and that they agreed upon medical expenses of $461.62, which was the figure that was taken.

He said that Clark told him the interest was approximately the same as taken in 1971. That figure was $94.82. He said they estimated the 1972 interest at $92.14, and Clark agreed to that figure.

He said Clark gave him the interest figure paid to Chemung Canal Trust as $72.40.

In regard to dues and fees, he said that Clark told him that it was the same as 1971, which was $28, and that that was the figure agreed upon for 1972.

In regard to the figure of $25 for a flashing car light, he said that figure appeared on the 1971 return and that Clark told him he replaced that in 1972 for the same figure of $25.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation of false and fraudulent matters in the 1972 tax return of the Clarks and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on this ninth count of the indictment.

The tenth count of the indictment deals with the 1972 tax return of Larry and Joanne Madden, and particularly with medical and dental expenses, health insurance premiums, and miscellaneous deductions for business clothing.

Larry Madden testified that Conlin prepared his 1972 return. Larry Madden testified that he told Conlin that he paid $266 for health insurance. In regard to the deduction claim of the Maddens for $1,740 for business clothing, he said that the clothing that he purchased was not purchased particularly for a business purpose but was for clothing that could be used for the business purpose as well as ordinary street wear.

Conlin testified that he interviewed Mr. and Mrs. Madden together in February, 1973, and that they had the 1971 return before them. In regard to medical and dental expenses, he said that the figure was the same as the previous year, half of which was taken at $150, and that that was the figure that was taken for 1972.

In regard to the clothing he said that they gave him a long list of clothing and that they told him that they had to have this large amount of clothing for frequent changes of clothing in his work. Conlin said that he told him that this was a questionable item and that he faced the likelihood of an audit if he insisted upon taking

this as a credit. He said that Madden said that his superiors had taken such a deduction, and he insisted on such a deduction, and it was taken on the insistence of Madden. He said that the figures of business dues and subscriptions came specifically from Madden.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation of false and fraudulent matters in the 1972 tax returns of the Maddens and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on this tenth count of the indictment.

The eleventh count of the indictment deals with the 1972 returns of Gary and Carol Warner, and particularly involves medical and dental expenses, health insurance, real estate taxes, gasoline taxes, mortgage interest, and a casualty loss.

On the return there was claimed a deduction of $150 for medical expenses, $197 for gasoline taxes, $144 for real estate taxes, $516 for mortgage

interest and a casualty loss of $4,210.

Gary Warner testified that Conlin prepared his 1972 return. He said he brought his books to Conlin. He said he told Conlin he paid $6.50 per month for health insurance. He said he told him he drove eleven thousand miles in 1972. He denies that he told Conlin that he drove thirty-five thousand miles. He denies that he told Conlin he paid $516 for interest on his home mortgage. He said he applied to the Small Business Administration for a loan of $3,300 for a personal property loss. He said he had a casualty loss of a trailer which was covered by insurance of $2,700 and that he told Conlin that. The casualty loss, which was claimed on the return, was for $4,210.

Conlin testified that the interview for the 1972 return was with Gary Warner. In this interview they did not have a 1971 return to refer to. He said Warner told him they had a mobile home, which he said was in the flood. He said Warner gave him a list of payments he had to make on the mobile home and that he, together with Warner, figured out the interest expense on the payments

of $516.46 with which figure Warner agreed. He said Warner said the market value of the mobile home before the flood was $4,700, and that it was a total loss. He said that he received $2,700 from insurance and that there remained an unreimbursed loss of $2,000. He said his papers showed no notation of an application for a Small Business Administration loan.

He said the figures for medical expenses given him by Warner were over $300 and that he therefore took half, or $150, as a deductible item.

In regard to gasoline tax he said Warner told him that they had one car and that they drove 36,000 miles, and upon this figure and using the IRS chart, the gasoline tax figure was computed. He said the figure of $144 for taxes on the mobile home came specifically from Warner.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation of false and fraudulent matters in the 1972 tax return of the Warners, and whether these elements have been established beyond a reasonable doubt. If so,

that would warrant a finding of guilty against Conlin on this eleventh count of the indictment.

The twelfth count of the indictment deals with the 1972 tax return of Mrs. Wuenderlich, and particularly with a casualty loss claimed in the return of $9,500, a depreciation loss of $9,361.

Mrs. Wuenderlich testified that Conlin prepared her 1972 tax returns. She ran a retail flower shop. She brought to Conlin her books. There were two books, one a pay-out book and the other a take-in book. She denies that she gave Conlin a figure of $1,440 for personal property loss, and she denies that she gave Conlin a figure of $9,500 for real property loss. She denies that she gave him a figure of $684 for boiler room remodeling. She denies that she gave him a figure of $822 for loss of a furnace, and denies that she gave him a figure of $317 for a cupboard loss and a figure of $90 for a table loss. She said she actually received and told him that she had received $1,400 in interest.

Conlin testified that in February, 1971, he had an interview with Mrs. Wuenderlich about

setting up a new set of books for her. He denies any conversation with her to the effect that he could save her taxes. The interview regarding the 1972 return took place in June, 1973. She was then on an extension. They did not have before them any prior tax returns.

He said she gave him a depreciation schedule which they used for the 1972 return. He said she didn't have her books with her but had a summary taken from the books.

In regard to casualty loss, he said she gave him a figure of $9,500 for casualty loss, personal and real estate. He said he urged an appraisal, but she said she didn't want the expense of an appraisal. He said they went through the depreciation schedule in detail and that it was in some respects changed.

He said she told him that they had five feet of water in the cellar and gave him a list of items that were in the cellar and had been destroyed. She told him, he said, that she spent $3,000 for furniture. He said his papers showed no notation of a Small Business Administration

loan. He said she had a Brush appraisal of the flood damage in the amount of $1,200 for purpose of the audit.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preperation of false and fraudulent matters in the 1972 return of Mrs. Wuenderlich and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of guilty against Conlin on this twelfth count of the indictment.

The thirteenth count of the indictment, and the last in this kind of count, deals with the 1973 tax return of Mrs. Wuenderlich, and particularly with the figure of $45,920.50 set forth in the 1973 tax return for gross sales, and the figure of $880.15 for interest income.

Mrs. Wuenderlich testified that Conlin prepared her 1973 tax return. She denied that she gave Conlin a figure of $45,000 for her gross sales in 1973. She said that she gave him a figure, and that the book showed that the 1973 gross sales

should be $54,000. She denied that she gave him a figure for interest received by her in 1973 of $880. She said that the figure should be $1,440 and that she had reported that figure as interest income received by her in 1973.

Conlin testified that in the interview for the 1973 return Mrs. Wuenderlich brought in the books and that from those books he prepared a "T" Schedule. He said they had a long discussion about the advantage of her changing over to an accrual basis. He said that it was discovered that he had made an error of $10,000 in going over the books, which in some respects accounted for the error in the sales figures used for the 1973 return. He said the interest income figure of $880.15 came specifically from her.

You will have to determine on all the evidence whether Conlin, with criminal intent, aided, assisted and advised in the preparation of false and fraudulent matters in the 1973 tax return of Mrs. Wuenderlich, and whether these elements have been established beyond a reasonable doubt. If so, that would warrant a finding of

guilty against Conlin on this thirteenth count of the indictment.

The fourteenth count of the indictment is a distinctly different kind of charge from that contained in the first thirteen counts.

Count 14 charges that on January 18, 1974, Conlin did unlawfully remove and mutilate records and documents of the United States from the Small Business Administration Office in Elmira. It charges that the records and documents which were removed and mutilated were copies of the 1970 and 1971 individual income tax returns of Thomas and Helen Gill, which had been filed with the Small Business Administration in Elmira on January 4, 1974, as part of and in connection with an application for a disaster loan with the Small Business Administration on behalf of Thomas J. Gill.

Brian Qualey, Loan Assistant of the Small Business Administration, testified that he received the Gill application for a loan on January 4, 1974, and that Conlin then gave him Gill's tax returns for 1970 and 1971. He said he gave them to Howard Garrity of the Small

Business Administration because it wasn't his case.

Cristofaro testified that copies of the tax returns for 1970 and 1971 of Gill were on file with the Small Business Administration before January 18, 1974.

Conlin testified that on the morning of January 18, 1974, he met Gill in Corning at his office. They were preparing to go to the Small Business Administration Office in Elmira where they had an appointment at eleven o'clock. He said he met Gill early and that before he left his office, he had Xerox copies made in his office of the 1970 and 1971 Gill returns. He said they arrived at the Small Business Administration Office at 10:00 A.M. -- I think that was eleven o'clock -- and immediately went in to see Cristofaro. During the interview both he and Gill stood in Cristofaro's office with their outer coats on. He said Gill put the box of papers which he was carrying on the table in front of Cristofaro and that Cristofaro said, "Give me the tax returns." They did so, and then he said Cristofaro asked Gill, "Are these your tax returns?"

Gill said they were, and then Cristofaro said, "Sign them."

Thereupon, Gill and Conlin signed the 1970 and 1971 tax returns of Gill. Thereupon, he said Cristofaro handed Gill a letter to the effect that the application had been withdrawn and that the Small Business Administration required additional information before it could be reconsidered. Conlin said he put the letter and the copies of the returns back in his briefcase.

He said Cristofaro said, "Give me the tax returns. They are government property." Whereupon, Conlin said, "I just brought them in the office, and they are not part of the government file."

Conlin admits that he did tear up the copies of the 1970 and 1971 returns of Gill. Conlin said that what he tore up were the copies of the returns that he had brought in that morning of January 18, 1974, to Cristofaro's office.

Cristofaro said that what he tore up were the copies of the 1970 and 1971 returns which had been filed with the Small Business Administration before January 18, 1974.

So the important question that you have to decide in connection with this count of the indictment is whether the papers which were torn up by Conlin on January 18, 1974, in Cristofaro's office were the papers which Conlin had brought into the Small Business Administration Office on the morning of January 18, 1974, or whether they were copies of Gill's tax returns for 1970 and 1971 which had previously been filed with the Small Business Administration. If they were not copies of the 1970 and 1971 tax returns of Gill which had previously been filed with the Small Business Administration, they were not government property, and there could be no finding of guilty of Conlin on this fourteenth count of the indictment.

To warrant a finding of guilty on this fourteenth count of the indictment, the proof must establish beyond a reasonable doubt that on January 18, 1974, Conlin unlawfully and with criminal intent removed and mutilated the 1970 and 1971 tax returns of Thomas J. and Helen Gill, which had been filed with the Small Business Administration on or about January 4, 1974.

The fifteenth count of the indictment, and the last count, charges that on or about January 12, 1973, in a matter within the jurisdiction of the Small Business Administration, Conlin did wilfully falsify and cover up by a trick or device a material fact and did make or use a false writing or document, knowing the same to contain a false and fraudulent statement in that Conlin submitted with his Small Business Administration application for a disaster loan, a document which he represented to be a copy of his 1971 income tax return; whereas, in truth, as he then knew, he had not filed a 1971 United States Individual Income Tax Return with the Internal Revenue Service, and that in fact, up to and including the date of the filing of this indictment, has never filed his 1971 United States Individual Income Tax Return.

Exhibit G-2 is Conlin's application to the Small Business Administration for a disaster loan in the amount of $27,400 dated January 12, 1973, and received by the Small Business Administration in Elmira on January 15, 1973.

The representatives of the Internal Revenue Service at Andover, Massachusetts, testified that Conlin had filed application for extension of time to file his 1971 return dated April 14, 1972, and received by the Internal Revenue Service on April 20, 1972.

He testified that an amended 1971 return of Conlin had been received by the Internal Revenue Service on October 20, 1975. He said there was no record of the receipt of an original return for 1971 but that what purported to be a copy of the 1971 original return was filed with Conlin's amended return.

Note that the charge is that Conlin submitted to the Small Business Administration on January 12, 1973, a document which purported to be a copy of his 1971 income tax return. If no 1971 return was filed until October 20, 1975, there was no 1971 return until its filing on October 20, 1975, and manifestly, if there was no return filed in January, 1973, then it would have been impossible for him to have a copy of a return.

Conlin had prepared a form which may

have been signed by him in April, 1972, but it never got out of his office. They did not become returns until he filed them with the IRS in October, 1975.

That leaves the important question, and controlling question, on this count to be whether Conlin had the criminal and evil intention in January, 1973, when he filed the document purporting to be a copy of his 1971 return, of deceiving or attempting to deceive the Small Business Administration in making the determination on Conlin's application for a loan.

The government introduced in evidence a chart -- they call it a Summary Chart -- in connection with the testimony of the expert from the Internal Revenue Service. That chart and the testimony of this expert had previously been discussed in chambers between myself and counsel for the government and counsel for the defendant. It was my understanding that the testimony of this expert witness from the Internal Revenue Service was to assemble the evidence regarding various items in dispute and was to present a chart which

would show in graphic form, and would assemble in a paper the evidence which had been given about the disputed items throughout the course of this trial. It turned out on the testimony of this expert that he did not understand that that was to be his function at all. His understanding was, and the way the chart was prepared, was that he was to give his expert opinion about the deductibility of the disputed items rather than to assemble the evidence about the disputed items. The chart was then in evidence. I declined to strike the chart from evidence because some of the testimony regarding the chart was clearly admissible in evidence.

In regard to that chart, I instruct you that that chart has no independent existence or evidentiary value in and of itself. The evidentiary value which is to be given that chart is entirely dependent upon the basic testimonial or documentary proof upon which the chart exists and upon which it is based, and upon the accuracy and credibility of the testimonial or documentary proof upon which the chart is based. It is to

have no other function in the case.

An indictment is nothing more than a formal charge against a defendant. It is no evidence whatsoever of guilt, and is not to be construed as any indication of guilt. It is the method under our system of law by which a defendant is formally notified of the charges against him so that he may definitely know the charges and be able to formulate his defense against the charges.

I am going to allow you to take the original indictment into the jury room so that you may have it before you in your deliberations of the charges in this case.

I will hand the indictment to the Clerk at this time.

(Indictment handed to the Clerk.)

THE COURT: Each count of the indictment is a separate charge of a violation of law, and each count must be considered separately and a conclusion of guilt or innocence be made by you on each separate count.

The government has the burden of establishing each specific element of each of the charges contained in the indictment. I have given you those elements. Each element must be established beyond a reasonable doubt to warrant a finding of guilty. The burden of establishing guilt always remains with the government. There never comes a time in the case when the burden shifts to the defendant to prove his innocence.

'Reasonable doubt' means a real or substantial doubt arising from the evidence or perhaps from the lack of evidence of any of the elements that go to make up the charge. It is a doubt that is based upon reason or logic as distinguished from a doubt that might be based upon some emotion, such as a whim, a fancy, a caprice, or even a so-called hunch. To establish the elements of each count charged means to establish them to a reasonable or moral certainty.

You, as jurors, are the sole judges of the credibility of the witnesses. You, as jurors, are the sole judges of the facts in the case. It is the duty of the court to instruct you as to

what the law is so that you may apply the law as the Court gives it to you, to the facts as you find them. You may not invade the province of the Court as to what the law is. The Court may not invade the province of the jury as to what the facts are.

Some of the witnesses in this case have an interest in the outcome; some have a direct interest, some an indirect interest. But whether the interest of a witness is direct or indirect, it is incumbent upon the jury to determine whether you think the witness has let the interest influence his or her testimony in the case. If you think it has, the testimony should be discounted accordingly.

If you conclude that some witness in the case has testified falsely in regard to some material aspect of the case, you have a right, if you choose, to reject the testimony of that witness entirely, or you may reject that part which you believe to be false and retain the balance. That is entirely up to you.

During the course of this case, there has

been a substantial amount of newspaper publicity and media publicity. You must be careful in this case to restrict your deliberations to the evidence in the case that came from the witness stand, oral testimony and documentary testimony. The verdict in this case must be based upon the evidence and not upon some other consideration that may have come to you in some way outside the evidence in the case.

During the course of these instructions I have given you my version of the evidence in the case based upon my rough notes made during the trial and upon my recollection of the evidence. I want to point out to you that you are not at all bound by my version or my recollection of the evidence. If your version or your recollection of the evidence differs from mine, have no hesitation in rejecting my version. If your version differs from mine, rely upon your own version and upon your own recollection.

As to each particular count, the form of your verdict should be either "guilty" or "not guilty." No explanation of your verdict is

required , and no explanation of your verdict is appropriate.

The defendant has sworn some witnesses who have testified to the good reputation in the community of the defendant for honesty and integrity. This is commonly called "character testimony." Evidence of good character when considered in connection with the other testimony in the case might give rise to a reasonable doubt. The circumstances might be such that an established reputation for good character, if it is relevant to the issue, would alone create a reasonable doubt, although without it, the other evidence in the case would be convincing.

A finding of guilt may not be based on speculation or conjecture. It may only be based on proof beyond a reasonable doubt of every essential element of the crime charged. No juror may base his verdict upon rumor, gossip, or newspapers or other materials which he or she may have read or heard during the course of the trial. The jurors must disregard any newspaper articles or media reports about matters which have not been established

by the proof in the case. The jurors' verdict must be based only upon the sworn testimony and upon the documentary evidence submitted in the case.

To be effective as a verdict, your verdict as to each must be unanimous. If you are not able to agree unanimously on all counts but that you can agree on some of them, report that to the Court. As to each count, your verdict should be "guilty" or "not guilty." And as I said before, no explanation of your verdict is required, and no explanation is appropriate.

I think I have omitted to tell you one thing. Every defendant in a criminal case is presumed to be innocent, and that presumption remains with the defendant throughout the case and up to the very end of the case and can only be overcome by evidence which establishes guilt beyond a reasonable doubt.

Now I have a large number of requests to charge from the government and the defendant, and I think I have largely covered them, but I am prepared to rule on any specific one if you want to urge them now.

MR. HOULIHAN: Your Honor, I haven't heard any charges with regard to the deductibility.

THE COURT: What is the number?

MR. HOULIHAN: I don't have a numbered copy.

THE COURT: I can't charge unless you give me the number, because I've got your book here.

MR. HOULIHAN: I didn't number my copies identical with yours that I submitted to the Court as a number. May I just copy your numbers down so I can refer to them?

THE COURT: Here is the one you submitted to me (indicating), and you can call my attention to it.

All right, I will take Mr. Levy's requests at this time.

MR. LEVY: Your Honor, I think you misstated in the statement of the facts just one particular fact. You mentioned that the Brush appraisal on Wuenderlich was $1,200, and I think that the testimony was that it was $12,000, not $1,200.

THE COURT: I may very well be in error. I will leave that to the jury. Rather than go through my notes now, I will leave that entirely

to the jury.

MR. LEVY: All right, Your Honor.

Now we would request Your Honor that you charge Request No. 2.

THE COURT: I decline to charge No. 2.

MR. LEVY: And No. 7, Your Honor.

THE COURT: I will charge No. 7.

The defendant is charged with preparing false or fraudulent income tax returns containing alleged wilfull overstatements of the amount of deductions and alleged wilfull understatements of the amount of items of income allowed by law. The evidence in the case need not establish beyond a reasonable doubt that the alleged criminal deductions and items of income and the alleged correct deductions and items of income total the exact amount stated in the indictment.

However, the prosecution must prove beyond a reasonable doubt that the defendant wilfully overstated deductions or understated income in substantial amounts. Whether the amounts are substantial depends upon the facts, circumstances and conditions shown by the evidence in this particular

case and are for the jury to determine.

MR. LEVY: Your Honor, we respectfully request that the Court charge Request No. 8.

THE COURT: I will charge No. 8.

Actual knowledge by the defendant of the falsity of the income tax return is an essential element of the crime charged in the indictment. The statement on the income tax returns above the preparer's signature states that his declaration is based on information of which he has knowledge. You may not find the defendant guilty unless you find that he did have actual knowledge that the entries on the tax returns were false or fraudulent.

The prosecution has not met its burden of proof if it has only shown that the defendant may have suspected or thought that the entries were unlawful because he was not required to make an audit or investigate the information told to him by the taxpayers.

MR. LEVY: Your Honor, we respectfully ask that Request No. 16 be charged.

THE COURT: No. 16?

MR. LEVY: Yes, Your Honor. That is on

the second group, Your Honor.

THE COURT: I will charge No. 16.

Note that we are not here to determine any civil liability. When I use the term "civil liability," I mean the actual amount of tax dollars, if any, which the taxpayers may owe because of any overstatement of deductions or omissions of income from it for any reason.

The determination of the taxpayers' correct income tax liability is a subject of civil proceedings which are completely different from this case. We are here only to determine whether there has been a criminal violation with respect to the preparation of the tax returns for 1972 and 1973. And if you acquit the defendant on these criminal charges, it does not have any bearing on the taxpayers' civil liability. As I have said, that is a subject of separate proceedings, and it is not your function to determine how much, if anything, they owe, but merely whether the defendant has violated the criminal law.

The time which we are concerned with is the time that the returns were prepared. That is

the time when you must determine whether or not the defendant had the specific criminal intent. If you find the defendant believed that the returns were true and accurate when prepared, he cannot be held responsible criminally even though at a later date facts come to his attention which he did not have access to at the time of preparing the return which indicate that the return was not true and accurate.

I decline to charge the last paragraph.

MR. LEVY: Your Honor, I respectfully request No. 17 be charged.

THE COURT: I decline to charge No. 17.

MR. LEVY: And No. 18, Your Honor.

THE COURT: I will charge No. 18.

If you find that before and after values contained in Brush's appraisal reports were made by Brush without any collusion with the defendant, then you must find that the defendant had a right to rely on those appraisals, regardless of whether or not they were correct.

MR. LEVY: And Request No. 19, Your Honor.

THE COURT: I will charge No. 19.

The defendant is not on trial for any act

or conduct not alleged in the indictment. And you cannot convict him of any violation not charged in the indictment.

MR. LEVY: And No. 22.

THE COURT: I decline to charge No. 22.

MR. LEVY: And No. 24, Your Honor.

THE COURT: I decline to charge No. 24.

MR. LEVY: And No. 26, Your Honor.

THE COURT: I decline to charge No. 26.

MR. LEVY: And No. 27, Your Honor.

THE COURT: I decline to charge No. 27.

MR. LEVY: May we just for the record have exception to your ruling, Your Honor?

THE COURT: Yes, surely.

MR. HOULIHAN: Your Honor, I have written down the numbers that I request the Court to charge.

THE COURT: I will charge No. 2.

The Internal Revenue Code provides that a person may be guilty of the offense of aiding or assisting in or procuring the preparation or presentation of a false or fraudulent return regardless of whether or not such falsity or fraud is with the knowledge or consent of the taxpayer. It

makes no difference whether or not the defendant's clients had knowledge of or consented to the falsely overstated deductions.

No. 6 I will charge.

"Intent" ordinarily may not be proved directly, for there is no way in fathoming or scrutinizing the operations of the human mind. Thus, direct proof of wilful or wrongful intent or knowledge is not necessary. You may infer a defendant's intent from acts or from a combination of acts, although each act standing by itself may seem unimportant. You may consider any statement made or done by the defendant and all other facts and circumstances in evidence which indicate his state of mind at the time in question.

I decline to charge No. 7.

No. 8 I will charge.

There are, generally speaking, two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as testimony of an eyewitness. The other is circumstantial evidence, which is proof of a chain of facts and circumstances pointing

to the commission of the offense. The law makes no distinction between the weight given to either direct or circumstantial evidence. It requires only that the jury after weighing all the evidence be convinced of the guilt of the defendant beyond a reasonable doubt before he can be convicted.

No. 10 I will charge.

The defendant has chosen to testify in this case in his own behalf. The fact that he is accused in the indictment in the case does not make him incompetent as a witness. As such, the defendant's testimony is to be judged in the same way as that of any other witness. However, the jury should keep in mind that defendant's special interest in the case in weighing his testimony.

I decline to charge No. 11.

I charge No. 13.

A statement, including a statement in a claim or a document, is false if it was untrue when made and was then known to be untrue by the person making it or causing it to be made.

I charge No. 14.

To act with intent to defraud means to act

wilfully and with the specific intent to deceive or cheat; ordinarily for the purpose of either causing some financial loss to another or bringing about some financial gain to oneself. However, the evidence in the case need not establish that the United States or any person was actually defrauded, but only that the accused acted with the intent to defraud. An act is done wilfully if done voluntarily and intentionally and with the specific intent to do something the law forbids, that is to say, with bad purpose, either to disobey or to disregard the law.

I will charge No. 15.

An income tax return may be false not only by reason of an understatement of income but also because of an overstatement of lawful deductions. The term "deduction" means any item allowed by the Internal Revenue laws to be subtracted from gross income in computing the amount of net income for income tax purposes. Any such items, of course, must actually have been paid by the taxpayer during the year covered by the return. In this case it is charged that the income tax

returns were false because of the defendant's wilful overstatement of the amount of the deductions allowed by the Internal Revenue laws. A deduction from gross income is allowed by the Internal Revenue laws for contributions actually made by the taxpayer to religious and charitable organizations during the year covered by the return. If a charitable contribution is made in property other than money, the amount of the contribution is a fair market value of the property at the time of the contribution.

I will charge No. 16.

A deduction from gross income is also allowed by the Internal Revenue laws for certain taxes, including sales taxes, real estate taxes, and gasoline taxes actually paid by the taxpayer. These taxes are deductible only by the person upon whom they were imposed. In the case of real estate taxes, they are only deductible by the owner of the property, and taxpayers who pay rent for the use of property they do not own are not entitled to a deduction of real estate taxes. In the case of gasoline taxes, a deduction is allowed

of an amount computed on a tax table but only for the number of miles actually driven by the taxpayer. In the case of sales taxes, an amount, if deductible, is computed from a tax table based upon gross income. In addition, any amount may be taken for sales taxes paid above that arrived at from the tables but only for purchases of an automobile, airplane, boat, mobile home, and materials used to build a new home where the taxpayer is a contractor. Additional sales taxes may not be deducted for purely person purposes, such as carpets and furniture.

I will charge 16-A.

A deduction from gross income is allowed for an amount not in excess of $150 equal to one-half of the expenses actually paid by the taxpayer for medical insurance during the year covered by the return.

I will charge No. 18.

A deduction from gross income is allowed by the Internal Revenue laws for union dues actually paid during the year covered by the return.

I will charge No. 19.

No deduction is allowed for any expenses

not actually paid by the taxpayer during the year covered by the return.

I will charge No. 20.

A deduction is allowed from income for expenses incurred in purchasing a uniform or special clothing used in the taxpayer's employment, such as a nurse's uniform or a judge's robe. However, no deduction is allowed for the purchase of clothing that is ordinary and is adaptable for and as normal street clothes.

I will charge No. 22.

A deduction from gross income is allowed for all interest actually paid by the taxpayer within the year covered by the tax return.

I will charge No. 23.

A deduction from gross income is allowed by the Internal Revenue laws for expenses actually paid or incurred by the taxpayer during the year covered by the return in connection with the preparation -- I guess you are going to have the whole Internal Revenue Code in here.

I will repeat charge No. 23.

A deduction from gross income is allowed by the Internal Revenue laws for expenses actually paid or incurred by the taxpayer during the year covered by the return in connection with the preparation of his or her tax return.

I will charge No. 24.

No deduction is allowed for any expenses not actually paid by the taxpayer during the year covered by the return.

I will charge No. 28.

A deduction from gross income is allowed by the Internal Revenue laws for expenses actually paid or incurred by the taxpayer during the year covered by the return in connection with the preparation of his or her tax return.

I will charge No. 31.

The evidence in the case need not establish beyond a reasonable doubt the exact amount of the deductions which were overstated but only that the accused wilfully overstated or caused to be overstated the deductions to which the taxpayer was entitled under the Internal Revenue laws as charged in the indictment.

I will charge No. 33.

You will note that the indictment charges that each offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

And I will charge the last one, which is No. 34.

The question of punishment of the defendant in the event of conviction is no concern of the jury and should not enter into or influence your deliberations in any way. The duty of imposing sentence in the event of conviction rests exclusively upon the Court, and the Court has wide latitude in such matters. You should weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of such evidence without any consideration of the matter of punishment.

Is there anything else?

MR. LEVY: We have omitted a request to charge in regard to No. 13, and we would respectfully request the Court to charge No. 13.

THE COURT: I will charge No. 13.

You are not obligated to accept the testimony of any witness, even though it is uncontradicted. The weight of evidence is not determined by the number of witnesses testifying on either side. In this case you have heard testimony from employees of the Small Business Administration, the Federal Bureau of Investigation and the Internal Revenue Service, and you are hereby instructed that you are not to give the testimony of any of those witnesses any greater weight merely because they are employees of the government.

MR. LEVY: Your Honor, we have no further requests, but we do except to the government's charges, No. 16, No. 19, No. 20, No. 24 and No. 31.

THE COURT: The exception is noted.

MR. HOULIHAN: No further requests, Your Honor.

(Two Marshals were duly sworn.)

THE COURT: At this time it is my duty to excuse the alternates in the case. I am always embarrassed to do this, because it always occurs before lunch, but I have no alternative. Thank you very much for your services.

(At 11:35 A.M., the jury retired to deliberate on a verdict.)

(At 5:10 P.M., a note was received from the jury.)

THE COURT: I have a note from the jury which reads:

"We, the jury, are in a bind on Count 14.

"Question: Was IRS formsdestroyed by Mr. Conlin government property after Mr. Gill and Mr. Conlin signed forms?"

My answer to that is no.

The second question is:

"Are we allowed on other counts for Court Reporter transcripts?"

There are no transcripts. The notes haven't been transcribed. The only part of the record that was transcribed, which I heard Mr. Levy say that he requested the Reporter to get

out certain specific testimony in a limited way. Now you are entitled to have the Reporter read any part of the testimony that you want read, but bear in mind that it will take as long for the Reporter to read it as substantially it was to give the testimony. Let me know if you want any of that testimony read.

(At 5:15 P.M., the jury again retired to continue their deliberations.)

(At 5:30 P.M., the jury again returned to the courtroom.)

THE COURT: I perhaps answered that first question of yours too quickly. It needs a bit of an explanation.

There is conflicting testimony regarding the tax forms destroyed by Conlin. Conlin testified that he brought the forms with him on the morning of January 18, 1974. The man from the Small Business Administration testified that the forms were submitted to him and filed on January 4, 1974. And Mr. Garrity and Mr. Cristofaro testified that those forms were part of the file of the

Small Business Administration before Mr. Conlin arrived at the Small Business Administration office on January 18, 1974.

You must decide the issue as to whether the identical forms which Conlin destroyed were filed on January 4, 197[illegible], or whether Conlin brought those identical forms with him on January 18, 1974, and thus, did not become part of the Small Business Administration file.

Whether or not the destroyed forms were part of the file is an issue of fact to be decided by you. I think that explains it.

That is all.

(At 5:35 P.M., the jury again retired to continue their deliberations.)

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Rochester, New York

Thursday, April 8, 1976

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(At 9:50 A.M., a note was received from the jury.)

THE COURT: I have got a note from the jury, and I will read it:

"May we have instructions on Indictments 1 through 13.

"On taxpayer counts who have several charges, should we find some guilty and some not guilty on same count?

"How do we classify 'count' as a whole?"

Now I will take up the last part of your note. The last part of your note says, "On taxpayer counts who have several charges --" I don't know what you mean by that. The first thirteen counts deal with separate taxpayers. The only taxpayer who was the subject of two counts was the woman florist. One count was her 1972 return and 1973 return. All of the others, that was one

taxpayer involved in each count, so I don't know what you mean by saying "on taxpayer counts who have several charges."

And the second part of your question is: "Should we find some guilty and some not guilty?"

Manifestly, I can't tell you how to find. I said to dispose of any one count, we must have a verdict, and a verdict means an agreement of guilty or not guilty as to a particular count. Now you don't have to agree on all the counts. If you can't agree on all the counts and can agree on some, you should report that to the Court. But I can't tell you, of course, whether you should find some guilty and some not guilty. I can't tell you that at all. And as I say, I don't know what you mean by "on taxpayer counts who have several charges."

Can you enlighten me on what you mean by that?

THE FOREMAN: Yes. We mean by that is like take, for example, No. 1. He has three or four different counts --

THE COURT: The number of items, that is,

interest and so forth?

THE FOREMAN: Items, yes, sir. Now some of those items we can't agree whether guilty on one or innocent on the other.

THE COURT: The whole count is one indictment. You have to consider the whole count. You either agree or not agree as to the whole count.

And the last sentence says, "On same count, how do we classify 'count' as a whole?"

THE FOREMAN: That is what we are referring to.

THE COURT: You consider the count as a whole. You either agree or not agree to any particular count, but as I told you yesterday, each count is a charge of a separate crime, and to be effective as a verdict, there must be a finding of guilty or not guilty as to that count. And as I said before, if you can't agree on all the counts but can agree on some, report that to me.

Now the first part reads:

"May we have instructions on indictments

1 through 13?"

Well, my charge as to the thirteen counts took practically an hour. Now I will read the whole thing if you want me to, or do you want me to read one particular count, one of the thirteen?

THE FOREMAN: Yes, one of the thirteen.

THE COURT: All right. I will read the first one.

The statute involved in the first thirteen counts of the indictment, all dealing with different taxpayers, provides that whoever wilfully aids or assists or advises the preparation or presentation in connection with any matter arising under the Internal Revenue laws, of a return which is fraudulent, as to any material matter, whether or not such fraud is with the knowledge or consent of the person authorized or required to present such return, shall be guilty of a felony, and upon conviction shall be subject to the punishment provided by the statute.

The first element in regard to these charges contained in the first thirteen counts of the indictment, all against different taxpayers, means that the government must prove beyond a reasonable doubt

that, even if Conlin did assist and advise the preparation or presentation of the matters within these thirteen counts that were alleged to be false, he must have done so wilfully. That means with a criminal or evil intent of violating the statute. There may be no conviction unless criminal intent in regard to each of these thirteen counts is established beyond a reasonable doubt. Conlin could not be found guilty as to any one of these thirteen counts in the absence of proof that what he did was done with criminal intent. If what he did in reference to these thirteen counts amounted to no more than negligence, or carelessness, or mistake, or innocently, or even with gross negligence or gross carelessness, he could not be found guilty, because in such a circumstance, there would be lacking the proof of criminal intent.

The first count deals with the 1972 tax return of the Ryders. Conlin prepared their 1972 return. When Mary Ryder went to Conlin, she had a work sheet dealing with the information for her 1972 return. She said she told Conlin that they had two vehicles and that they drove twenty-seven

thousand or twenty-eight thousand miles during 1972. One of the items in the tax return was a deduction for sales tax on building materials. She said she told Conlin that they did not own their own home and that there was no sales tax on building materials. She said she told him that she paid $15 a week for child care. The item that went into the tax return was a total for child care of $1,180. There were a number of items for contributions to churches and charities which were not, she said, in accordance with what she told Conlin. She said she told Conlin that she had a loss of personal items due to the flood amounting to $1,532. She said she got a loan from the Small Business Administration in the amount of $1,300. You will recall that when a taxpayer got a loan to cover a casualty loss that if the loan was less than $5,000 there was a forgiveness of the loan. That means that taxpayers did not have to pay back the amount of the loan. When the 1972 returns were prepared, Conlin put in a casualty loss of $3,300, and there was no information that Mrs. Ryder had obtained a Small Business Loan in the amount of $1,300.

The Internal Revenue Service Code allows a deduction from taxable income of any loss sustained during the taxable year and not compensated for by insurance or otherwise. When a taxpayer sustains a casualty loss and obtains a loan from the Small Business Administration to cover the casualty loss, if the loan is less than $5,000, the taxpayer does not have to pay back the amount of the loan. That means that the casualty loss is compensated for by a loan from the Small Business Administration which the taxpayer does not have to pay back. In such a case it is the duty of the taxpayer to inform the Internal Revenue Service whether a casualty loss has been compensated for by a forgiveness loan from the Small Business Administration in order that the Internal Revenue Service may determine whether the casualty loss has been compensated for by a loan from the Small Business Administration.

If the 1972 tax return of the Ryders contained false and fraudulent information and that Conlin wilfully and intentionally assisted and advised the preparation of the return containing the fraudulent matter, and if these things are

proven beyond a reasonable doubt, that would be sufficient to warrant a finding of guilty on the first count of the indictment.

Conlin testified that Mary Ryder gave him a figure for a casualty loss of $5,000 more than her application for a loan to the Small Business Administration. He said that she gave him in relation to the deduction for gasoline tax the mileage in detail for three vehicles. In regard to child care he said that she specifically gave him the figure of $1,180.

Now that covers the first count of the indictment. Is that sufficient, or did you want some more?

THE FOREMAN: That is sufficient.

THE COURT: All right. You may retire.

(At 10:05 A.M., the jury again retired to continue their deliberations.)

(At 4:58 P.M., the jury returned to the courtroom.)

THE COURT: The first thing I want to say is that I don't want anybody to tell me how

you stand. Now what I want to do is inquire about the situation if you think there is any likelihood to arrive at a verdict with any further deliberations.

THE FOREMAN: Yes.

THE COURT: You think you can?

THE FOREMAN: Yes.

(At 5:00 P.M., the jury again retired to continue their deliberations.)

(At 10:45 P.M., the jury returned to the courtroom.)

THE CLERK: Mr. Foreman, has the jury agreed upon a verdict?

THE FOREMAN: Yes, we have.

THE CLERK: How do you find on Count 1?

THE FOREMAN: On Count 1, guilty.

THE CLERK: How do you find on Count 2?

THE FOREMAN: Not guilty.

THE CLERK: How do you find on Count 3?

THE FOREMAN: Not guilty.

THE CLERK: How do you find on Count 4?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 5?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 6?

THE FOREMAN: Not guilty.

THE CLERK: How do you find on Count 7?

THE FOREMAN: Not guilty.

THE CLERK: How do you find on Count 8?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 9?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 10?

THE FOREMAN: Not guilty.

THE CLERK: How do you find on Count 11?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 12?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 13?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 14?

THE FOREMAN: Guilty.

THE CLERK: How do you find on Count 15?

THE FOREMAN: Guilty.

THE CLERK: Please listen as the Court

records your verdict.

You find on Count 1 guilty; on Count 2, not guilty; on Count 3, not guilty; on Count 4, guilty; on Count 5, guilty; on Count 6, not guilty; on Count 7, not guilty; on Count 8, guilty; on Count 9, guilty; on Count 10, not guilty; on Count 11, guilty; on Count 12, guilty; on Count 13, guilty; on Count 14, guilty; on Count 15, guilty.

Is your verdict as the Court has recorded it, and so say you all?

(Each juror, upon being asked by the Clerk, "Is that your verdict," answered in the affirmative.)

THE COURT: This jury is excused now.

(Jury excused.)

THE COURT: I will fix sentence for April 26th.

MR. LEVY: May we reserve motions for a week, Your Honor?

THE COURT: Yes. You have to make them in ten days.

MR. LEVY: Yes, Your Honor.

(At 10:55 P.M., Thursday, April 8, 1976, the trial in the above-entitled matter was concluded.)

Court Reporter's Certification.

I, A. Jake Jacobson, Official Court Reporter for the United States District Court for the Western District of New York, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared under my direction.

A. Jake Jacobson